IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5008 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL NARSINHBHAI KUBABHAI & 1 - Petitioner(s)

Versus

ARVINDBHAI B. UPADYAYA & 3 - Respondent(s)

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Appearance :

MR HM PARIKH for Petitioner(s) : 1 - 2.
NOTICE SERVED for Respondent(s) : 1 - 2.
MR JD TALATI for Respondent(s) : 1 - 2.
RULE SERVED for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 22/11/2005

ORAL JUDGMENT

In the present petition, the petitioners have challenged the legality of the order dated 22nd July 1991 passed by the Appellate Committee of Kheda District

Panchayat as confirmed by the order dated 30th March 1992 passed by the State Government.

2. The petitioners had applied for and were granted permission by resolution passed by the Gram Panchayat, respondent No.3 herein to put two doors on the northern side of their house. Upon application of the petitioners, the said resolution was passed by the Gram Panchayat on 26th December 1990. Some of the residents of the nearby locality had objected to such a permission being granted. Some of them filed appeal before the Appellate Committee. The Appellate Committee set aside the resolution of the Gram Panchayat mainly observing that permission has been granted without ascertaining the rights of the parties to put such doors and such a permission is likely to lead to unnecessary disputes and would also hinder the right of passage of residents living in the neighbouring locality. The petitioners challenged the decision of the Appellate committee before the State Government which also came to be rejected.

3. Learned advocate Shri Parikh appearing for the petitioners points out that while admitting the petition, the petitioner was granted interim protection against the implementation of the orders passed by the authorities

below. The petitioners have already put the doors as per the resolution of the Gram Panchayat. He also submitted that the rival parties had filed Civil Suit, but the interim injunction application was rejected.

4. The petitioners have been using and enjoying the said property since many years without any complication. The ownership of the petitioners was not in question. Taking overall view of the matter and at this point of time when the petitioners have been utilizing the doors since many years, I do not find it appropriate to bring about a situation whereby the petitioners would have to close the doors and reconstruct the wall as before. The impugned orders passed by the Appellate Committee as well as the State Government are therefore quashed. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)